

**AGREEMENT BETWEEN THE
CITY OF MILPITAS AND
EALASAIID HAAS**

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This Agreement is made and entered into this 20th day of April 2004, by and between the CITY OF MILPITAS, a municipal corporation, ("City") and Ealasaid A. Haas, ("Consultant").

RECITALS

- A. The City desires to retain the services of a professional copywriter for purposes of researching and preparing four editions of a City newsletter and limited press releases.
- B. The City has determined that Consultant possesses such specialized professional skill and ability, and the City Council has approved the selection of Consultant.

THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. **SCOPE OF SERVICES.** Consultant shall research and prepare the written copy for four editions of a City newsletter. Consultant shall also provide written copy for press releases as requested by City.
- 2. **TERM.** The term of this Agreement shall be from March 1, 2004, through the date the work performed by Consultant pursuant to this Agreement is completed or the date this Agreement is terminated as set forth below.
- 3. **COMPENSATION.** In consideration of Consultants performance, compensation of all professionals of Consultant shall be at the rates set forth in Exhibit A. The total compensation paid to Consultant, including reimbursement for expenses and costs, shall not exceed seven thousand seven hundred eighty dollars (\$7,780).
- 4. **METHOD OF PAYMENT.** Consultant shall monthly invoice the City for work performed. Payments to Consultant by City shall be made within thirty (30) days after receipt by City of Consultant's fully itemized invoices.
- 5. **INDEPENDENT CONSULTANT.** Consultant, in the performance of the work and services under this Agreement, shall act as and be an independent Consultant and not an agent or employee of City or any other governmental entity. In particular, Consultant shall receive no premium or enhanced pay for work normally understood as overtime, nor shall Consultant receive holiday pay, sick leave, administrative leave, or pay for any other time not actually worked. The intention of the parties is that Consultant shall not be eligible for benefits and shall receive no compensation from the City except as expressly set forth in this Agreement.

6. **ASSIGNABILITY.** The parties agree that the expertise and experience of Consultant are material considerations for this Agreement. Consultant shall not assign, transfer, or subcontract any interest in this Agreement, nor the performance of any of Consultant's obligations hereunder, without the prior written consent of the City Council, and any attempt by Consultant to do so shall be void and of no effect and a breach of this Agreement.
7. **INDEMNIFICATION.** Consultant shall defend, indemnify, and hold harmless City, its officers, employees, agents and volunteers against any claims, losses, or liability that may arise out of or result from damages to property or personal injury received by reason of, or in the course of work performed under this Agreement due to the acts or omissions of Consultants officers, employees, agents, or subconsultants. The acceptance of said services and duties by City shall not operate as a waiver of such right of indemnification.
8. **LIMITATION OF LIABILITY.** No employee of Consultant shall have individual liability to City. To the extent permitted by law, the total liability of Consultant to City for any and all claims arising out of this Agreement, whether caused by negligence, errors, omissions, strict liability, breach of contract or contribution, or indemnity claims based on third party claims, shall not exceed One Million Dollars (\$1,000,000).
9. **TERMINATION.**
 - a. This Agreement may be terminated by either the City or Consultant following five (5) days written notice. Thereafter, the City shall be liable to Consultant only for those fees and costs earned by Consultant to the date of termination and which shall be substantiated by an itemized, written statement submitted to City by Consultant. The City's right of termination shall be in addition to all other remedies available under law to the City.
 - b. In the event of termination, Consultant shall deliver to City copies of all reports, documents, computer disks, and other work prepared by Consultant under this Agreement, if any, and upon receipt thereof, City shall pay Consultant for services performed by Consultant through the date of termination. If Consultant's written work is contained on a hard computer disk, in the event of termination, Consultant shall, in addition to providing a written copy of the information on the hard disk, immediately transfer all written work from the hard computer disk to a soft (or floppy) computer disk and deliver said soft (or floppy) computer disk to City.
10. **OWNERSHIP OF MATERIAL.** All reports, documents, or other materials developed or discovered by Consultant or any other person engaged directly or indirectly by Consultant to perform the services required hereunder shall be and remain the property of City without restriction or limitation upon their use.

11. **WAIVER.** Waiver by City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by Consultant shall not be deemed to be a waiver of any term or condition of this Agreement.
12. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, supplies, materials, or equipment provided to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement.
14. **NOTICES.** All notices and other communications required or permitted to be given under this Agreement shall be given in writing by personal delivery, by facsimile transmission with verification of receipt or by U.S. mail, postage prepaid, and return receipt requested, addressed to the respective parties as follows:

To City: Tom Wilson, City Manager
 Milpitas City Hall
 455 East Calaveras Blvd.
 Milpitas, CA 95035

To Consultant Ealasaid A. Haas
 P.O. Box 362154
 Milpitas, CA 95036

Notice shall be deemed communicated on the earlier of actual receipt or forty-eight (48) hours after deposit in the U.S. mail, the date of delivery shown on deliverer's receipt, or by acknowledgment of facsimile transmission.

15. **ATTORNEY'S FEES VENUE, INTERPRETATION** In any legal action or proceeding brought for enforcement of this Agreement, the successful party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled. Venue shall be Santa Clara County Superior Court. This agreement shall be construed drafted as by both Parties and the rule that it shall be interpreted against the drafter shall not apply.
16. **PRIOR AGREEMENTS AND AMENDMENTS** This Agreement, including all exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment

duly executed by the parties to this Agreement. Any amendment relating to compensation for Consultant shall be for only a not-to-exceed sum.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement effective as of the day and year first above written.

"City"

CITY OF MILPITAS

By: _____
City Manager

Attest: _____
City Clerk

"Consultant"

By: _____

Its: _____

Emp ID#: _____

Exhibit A

Rate of Compensation

Newspaper Layout: \$25/hour, capped at eight hours for an eight-page issue and ten hours for a twelve-page issue. Maximum \$1,000

Newspaper Copy Writing: \$25/hour, capped at 32 hours per eight-page issue and 48 hours per twelve-page issue. Maximum \$4,800

Press Releases: \$25/hour, capped at four hours per release.